

**C. M. Carpenter, a sole proprietor, d/b/a Carpenter Trucking and General Drivers, Warehousemen & Helpers Local Union #89, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 9-RC-14100**

31 May 1983

**DECISION ON REVIEW AND  
DIRECTION OF ELECTION**

**BY CHAIRMAN DOTSON AND MEMBERS  
JENKINS AND HUNTER**

On 30 July 1982 the Regional Director for Region 9 issued his Decision and Direction of Election in the above-entitled proceeding, in which he found appropriate a unit of all dump truck drivers employed by Employer, excluding all office clerical employees, mechanics, tank truck drivers, all other employees, and all professional employees, guards and supervisors as defined in the Act. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Decision and Direction of Election, on the grounds, *inter alia*, that the Regional Director erred and departed from Board precedent in finding appropriate a separate unit of dump truck drivers, rather than an overall unit including tank truck drivers and mechanics in the Employer's transportation business.

By telegraphic order, on 26 August 1982 the Board granted the Employer's request for review with respect to the appropriateness of the unit. The election was stayed pending decision on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case and makes the following findings: The Employer, a sole proprietorship, owned by C. M. Carpenter, is engaged in the transportation of petroleum products utilized in the manufacture of blacktop, as well as the hauling of aggregate and asphalt products utilized in the construction of driveways and roadways. It has one permanent location in Annville, Kentucky, where its offices are also located, and it has a temporary truck lot at Boonesboro, Kentucky.<sup>1</sup>

The Employer employs approximately 45 dump truck drivers, 4 mechanics, 8 tank truck drivers,

and 1 bulldozer driver.<sup>2</sup> The Employer owns three basic types of vehicles designed for hauling heavy loads: tandems, tri-axes, and tractor-trailers, all of which bear the Employer's name. Although the Employer uses some standard type dump trucks, its tractor used to pull a tank trailer is of the same type used to pull a dump truck assembly. Drivers of both tank and dump trucks utilize similar skills. All employees are supervised by the owner, C. M. Carpenter. The Employer terminates most of its operations during the winter months from approximately December to April; only the mechanics and several of the drivers work year round.

The Petitioner initially sought a unit of all truck drivers. At the hearing, it amended its petition to include only dump truck drivers.<sup>3</sup> The Employer asserts that only an overall unit of all its drivers and mechanics is appropriate.

Tank truck drivers generally work at night. They haul oil for blacktop plants, primarily from Louisville, Kentucky, but they also haul from approximately seven other locations. The trip to Louisville takes approximately 2-1/2 hours over highways and, once there, the tank truck driver loads the truck with oil. This process takes approximately 15-25 minutes. Before returning to the Employer's Annville location, the driver will deliver the oil to one of the blacktop plants. Tank truck drivers sometimes make two trips to Louisville in a night. They are paid by the trip, are not eligible for overtime, and receive slightly more than dump truck drivers.

Dump truck drivers generally report to work from approximately 5:30 to 6:30 a.m., and complete their work between 4 and 5:30 p.m. They are paid on an hourly basis and can receive overtime. They haul blacktop from the plants where tank truck drivers deliver oil, and also haul other materials, such as rock and gravel. Of necessity they often drive to road repair and construction sites. Blacktop is made from the oil delivered by the tank truck drivers, and if tank truck drivers fail to supply the plants with oil, dump truck drivers' hauls are affected. If dump truck drivers fail to haul the blacktop, tank truck drivers are not required to replenish the plants.

Apparently, all tank truck drivers started with the Employer as dump truck drivers. Tank truck drivers occasionally drive dump trucks when tanker business is slow. Before transferring from dump to tank truck driving, dump truck drivers will ride with tank truck drivers to receive some

<sup>1</sup> Tank trucks are stationed at Annville, as are a majority of the dump trucks. A number of dump trucks are located at Boonesboro.

<sup>2</sup> The parties agreed that the bulldozer operator, who also performs some part-time mechanical work, should be excluded from the unit.

<sup>3</sup> The Petitioner agreed to proceed to an election in any unit found appropriate.

training. Both types of drivers need only an operator's license to drive either type of vehicle. All drivers are required to follow the Employer's limited number of work rules, and ordinarily obtain fuel for their trucks at the Employer's garage in Annville. If necessary, they can also refuel at service stations where the Employer has credit. Both types of drivers are paid on a weekly basis, and submit load tickets which indicate the weight, time of pickup, destination, and description of the product hauled.

In finding appropriate a separate unit of dump truck drivers, the Regional Director relied, in large part, on certain dissimilarities in working conditions between the dump truck and tank truck drivers; such as, the differences in the rates of pay; their working hours, resulting in minimal contact; and their job functions. Although such differences do exist, considering the fact that the nature of the Employer's business is the transportation of products used in road repair and construction and that all of its drivers are involved in some aspect of that function and are, to a large extent, dependent upon one another for continued operation, those differences do not warrant separating the two groups of drivers in this case. Rather, we find that the skills required and the job functions of dump and tank truck drivers are comparable and related, both groups of drivers share common supervision, and there is evidence of job progression and interchange between them.

The cases relied on by the Regional Director, for the most part, focus upon the differences between local and traditional over-the-road drivers.<sup>4</sup> We do not view the tank truck drivers in this case as true over-the-road drivers. Their trips to Louisville take approximately 2-1/2 hours, and, although they may make more than one trip per shift, they are not away from the plant overnight or for lengthy periods. In these circumstances, we find that the tank truck drivers share a sufficient community of interest with dump truck drivers to be included in a single unit. Cf. *Gerald G. Gogin d/b/a Gogin Trucking*, 229 NLRB 529, 538 (1977), *enfd.* 575 F.2d 596 (7th Cir. 1978).

Remaining for consideration is the placement of the Employer's four mechanics, who were excluded by the Regional Director. Like the drivers, the mechanics<sup>5</sup> are supervised by C. M. Carpenter

and relay his instructions to drivers. Mechanics are paid a salary and work year round. During the winter months, when the Employer terminates most of its operations, the mechanics repair the trucks. Mechanics ordinarily drive pickup trucks, but occasionally they will drive dump and tank trucks for the Employer. When the mechanics go out to repair trucks away from the garage, drivers render assistance to them. Thus, drivers assist mechanics in fixing flats and hand them tools when they are working on the engines. Also, the record shows that mechanics and drivers change oil, grease trucks, and change tires in the garage. Approximately six of the dump and tank truck drivers bring their trucks into the garage every week or two to service them.<sup>6</sup> In addition to servicing their trucks, these six drivers assist mechanics in pulling engines out of trucks, replacing them with rebuilt engines, putting drive shafts into trucks, hanging rear ends, and taking radiators out of trucks. When assisting mechanics in these activities, the drivers use the mechanics' tools.

Considering the nature of the Employer's operations and the necessary functional relationship of the mechanics to the drivers in maintaining the trucks in running condition, as well as the evidence of drivers' assistance in performing maintenance functions to their vehicles, we conclude that the mechanics share a sufficient community of interest with the drivers to be included in the unit. *Cless B. Davis d/b/a Queen City Transports*, 141 NLRB 964 (1963). See also *Norfolk, Baltimore and Carolina Lines, Inc.*, 175 NLRB 209 (1969).

As the Petitioner has agreed to proceed to an election in any unit found appropriate, we shall direct an election in the unit of employees found appropriate herein, as described below:<sup>7</sup>

All dump truck drivers, tank truck drivers and mechanics employed by the Employer at its Annville and Boonesboro, Kentucky facilities, excluding all office clerical employees, all other employees and all professional employees, guards and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]

<sup>4</sup> The cases cited by the Regional Director in support of his unit determination were *Century Moving & Storage, Inc.*, 251 NLRB 671 (1980); *Austin J. DeCoster d/b/a DeCoster Egg Farms*, 223 NLRB 884 (1976); *Capp Express, Inc.*, 220 NLRB 816 (1975); *Georgia Highway Express, Inc.*, 150 NLRB 1649 (1965); and *Gluck Bros., Inc.*, 119 NLRB 1848 (1958).

<sup>5</sup> One of the mechanics, P. R. Carpenter, is the brother of C. M. Carpenter. As the status of this individual was not determined by the Regional Director, he will be permitted to vote under challenge.

<sup>6</sup> There was testimony from one of these six drivers that he spends approximately as much time in the garage as he does on the truck.

<sup>7</sup> As the unit found appropriate herein is larger than the unit sought by the Petitioner, the holding of an election will be conditioned upon a demonstration by the Petitioner, within 10 days from the date hereof, that it has an adequate showing of interest in the broader unit found appropriate.